



1951.

Local Boards  
File No. II/51 (R)  
Legal Department

B BRANCH

Subject:— Rules under the  
Bombay Local Boards Act

1923

P-5  
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File No.

Gen. 194 e.

Local Boards II/51  
(R)

51-B

The Government and State-aided dispensaries Rules as published in Government Notification No. 2029/33 dated 24th Oct. 1937 are non-statutory rules. Similarly the model rules regarding the Medical Attendance on servant of local bodies at the grant-in-aid dispensaries or clinics maintained by these bodies and published under Government Resolution No. 95/33 dated 27th Nov., 1934 are non-statutory rules. In the said Government Resolution it is specifically stated that these are model rules and that Government are pleased to delegate to the Commissioners of Divisions the power to sanction rules framed by local bodies within their jurisdiction on the lines of the model rules. By Government Resolution No. 95/33 dated 15th August 1950, the Directors of Local Authorities have been empowered to sanction the said rules as the posts of Commissioners of Divisions have been abolished. They cannot therefore fall under the Bombay Local Boards Act, 1923. It, however, appears from the statement at page 103 of the file 95/33 that Government was giving grants-in-aid to local bodies for the maintenance of dispensaries, and in order that Government should have certain check on the dispensaries, it appears to be the policy of the Government to require the Commissioner to sanction the rules framed by a local board in respect of the medical aid to be given to its employees at the dispensaries maintained by local boards. In the circumstances mentioned above, the question of making rules under section 153(g) of the Bombay Local Boards Act does not arise; nor model rules were made under that section. It is sufficient if the rules are approved administratively by the Directors of Local Authorities.

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Additional Secretary to Government

U.R. to L.S.G. & P.H.D. No.795, dated the 12/1/1951

Legal Department.

The mere amendment of Rule 1 as proposed will not do. It will be ~~is~~ necessary for the District Local Board to scrutinize all their Rules and make it clear that so far as companies are concerned the tax is levied not on their profession but on their trades. The District Local Board will have also to scrutinize the rates of the tax so as to see that the total amount of the tax payable in respect of any one person is limited to the amount specified in article 276(2) of the Constitution.

Id/-

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Secretary to Government.

U.R. to L.S.G. & P.H.D. No. 4149, dated the  
13th March 1951.

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16/7.

Section 27A of the Bombay Local Boards Act, 1923 applies to the election of the President and the Vice-President. The said section does not prescribe the method by which such election is to be held. No rules are also made under the Act prescribing such method. It is true that in the absence of any prescribed method, the ordinary common law rule is that the election should be held by a show of hands. (See Crew on meetings p. 56-57). But where there are more than two parties more or less evenly balanced, the election by a show of hands would not be practicable. It would always be possible for two parties or more to combine to defeat a candidate from a third party. Section 35 of the Bombay Local Boards Act, 1923 is inapplicable to the present case. It applies to cases relating to the transaction of the business of a local board, when it is presided over by a duly elected President. The meeting to be called under section 27A of the Act is a special meeting and is presided over by the Collector or an officer appointed by him. It cannot transact any other business except the election of the President and Vice-President. Section 133(h) however empowers Government to make rules generally for the guidance of local boards and Government officers in all matters connected with the administration of the Act and not therein specially provided for. The provisions of clause (h) of section 133 have been availed of on several occasions and the rules have been made thereunder for facilitating the work of local boards. It would therefore, be legal and proper to make rules for the election of the President and Vice-President under section 133(h).

To avoid all difficulties rules on the lines of the Bombay Assembly and Council Rules may be made for the election of the President and Vice-President. These rules are based on the 'best of three' or elimination method. This method is followed in the Bombay Municipal Corporation and other municipalities. As section 27A of the Act provides that the meeting for the election of the President and Vice-President of the new Board was to be called within 25 days from the date of the publication of the names of the members under section 21 in the official Gazette it may be provided that if on such day, as in the present case, no election was made, the Collector shall have power to call the meeting on any future date. The rules under section 133(h) of the Act require previous publication. The appended rules may therefore be published for inviting objections within 10 days and they may then be finally published after the said period. After the expiry of that period, the local board in the present case may be asked to hold the election in accordance with the rules.

SSM / 17/7/56.

The question raised by the President, Ratnagiri District Local Board, is that the draft Rules which provide that the votes will be given by ballot and the voting shall be by the process of elimination are ultra vires as being inconsistent with section 35 of the Bombay Local Boards Act, 1923. In support of his contention, the President, District Local Board, relies on the decision in Samalbai v. Jemangbhai I.L.R. (1937) Bom. 225. It is true that in that case the High Court held that a regulation made by a taluka Local Board under section 35(1) of the Bombay Local Boards Act, 1923, was ultra vires. Section 35(1) was as follows:

"(1) A local board shall meet together not less than once in every 3 months and shall from time to time make regulations consistent with the Act ...".

The Taluka Local Board, North Daskroi, made a regulation which provided that the voting can be by ballot. It was held that such regulation was inconsistent with the provisions of section 35(2)(k) of the Act. In coming to that conclusion the High Court has no doubt observed that the Bombay Local Boards Act (obviously as it then stood) made no distinction between a meeting held by the Board for electing a President or any other meeting held to transact any other business. Section 35 could equally apply to both, nor did the regulations make any such distinction.

2. The above may be a correct view under the Bombay Local Boards Act as it then stood. But it would not be so after 1950. By Bombay Act

Act XXII of 1950 a special procedure has been prescribed for the election of the President and Vice President after a new election. The meeting is to be called by the Collector who is to preside at the meeting. The retiring President who remains still in office cannot ~~preside~~ <sup>preside</sup>. At that meeting no other business is to be transacted. In the case of equality of votes, the Collector has to draw lots. This section supersedes in terms the provisions of section 35(2)(f) and (k). It is therefore open to Government to provide a special procedure for such a meeting by means of a rule made under section 133(h). These points were considered when the draft rules were prepared. The draft rules are therefore in order and do not require any change.

Remembrancer of Legal Affairs.

J.R. to L.S.G. & P.M. No. 46082, dated the  
10th October 1951.